

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**EVAN LEE HOIT AND EVELYN
JEANNE HOIT**

RESPONDENTS,

**v.
BRENT WARREN RANKIN AND
KIMBERLY WEBB**

APPELLANTS.

DOCKET NUMBER WD71159
DATE: September 28, 2010

Appeal From:

Clay County Circuit Court
The Honorable Michael J. Maloney, Judge

Appellate Judges:

Division One: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin,
Judges

Attorneys:

Louis Angles, Excelsior Springs, MO, for respondents.

C. Carl Kimbrell III, N. Kansas City, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

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**EVAN LEE HOIT AND EVELYN
JEANNE HOIT,**

RESPONDENTS,

v.

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APPELLANTS.

No. WD71159

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Before Division One Judges: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Evan Lee Hoit and Evelyn Jeanne Hoit jointly occupied a home with their son, Brent Warren Rankin, and his wife, Kimberly Webb. The Hoits and the Rankins were listed on the deed as joint tenants with right of survivorship as of the time of the home's purchase. The Hoits contributed 100% of the purchase price for the home, but had expressed an intent that the home would pass to their son, Brent Rankin, on their deaths. Shortly after the home was purchased, disagreements regarding the home's joint use resulted in the Hoits filing a partition action.

The Rankins appeal from the trial court's judgment awarding the home outright to the Hoits, and awarding the Rankins a judgment for insurance and real estate tax payments they made. The Rankins contend the trial court erroneously declared the Hoits the sole owners of the property given the deed's contrary expression. The Rankins contend that there was an irrebuttable presumption that the Hoits and the Rankins had equal ownership in the home based on their family relationship and/or the Hoits' donative. The Rankins further contend that pursuant to section 528.030, the trial court was required to partition the home in kind or to order a sale of the home and divide the proceeds, and that its judgment awarding the home to the Hoits and awarding a judgment to the Rankins exceeded the court's authority.

AFFIRMED AS MODIFIED.

Division One holds:

(1) The Rankins rely on *Montgomery v. Roberts*, 714 S.W.2d 234, 236 (Mo. App. E.D. 1986), for the proposition that a joint tenancy deed which is silent as to ownership shares creates a presumption of equal ownership which can be rebutted so long as there is *neither* a family relationship *nor* donative intent by the cotenant contributing a greater portion of the purchase price. The principle cited in *Montgomery* improperly suggests that a family relationship where donative intent can be presumed creates an irrebuttable presumption of equal ownership, and the principle should no longer be followed.

Subsequent cases which have applied the aforesaid principle from *Montgomery* to create an irrebuttable presumption of equal ownership between co-tenants in the presence of *either* a family relationship *or* donative intent should no longer be followed, as "either/or" is the antithesis of "neither/nor."

Evidence of the nature of the relationship amongst cotenants and/or of any donative intent by the cotenant contributing a greater share of the purchase price is relevant as a court determines ownership shares. However, such evidence is not independently dispositive, and thus does not rise to the level of an irrebuttable presumption. Thus, when a deed is silent as to ownership amongst cotenants, the presumption of equal ownership may be rebutted through evidence of unequal contributions toward the purchase price of the property. However, unequal contributions may be explained by evidence that the unequal contribution was intended as an enforceable gift, a determination which may be influenced by evidence of the nature of the relationship among the co-tenants. In this case, the trial court properly reviewed and weighed the evidence and found that the Hoits contributed 100% toward the purchase price for the home, and that they did not intend a present, enforceable gift of any portion of the Home, notwithstanding their expression of intent, on their deaths, to leave the home to the Rankins.

(2) Having determined that the Hoits contributed 100% of the purchase price for the home, the trial court awarded the home, in kind, to the Hoits, an option expressly permitted the trial court by section 528.030. Though section 528.030 does not address the subject, it is well settled that in a partition action a trial court may impose an equitable lien on the portion of property awarded a cotenant to reimburse for contributions for taxes, insurance and necessary repairs and improvements to a property made by another party. Thus, the trial court properly imposed an equitable lien on the home for the benefit of the Rankins to reimburse them for amounts paid for taxes and insurance. The judgment is modified pursuant to Rule 84.14 to remove language which could be misconstrued as also imposing an *in personam* judgment against the Hoits for this same amount, as a trial court is not authorized in a partition action to award an *in personam* monetary judgment for reimbursement.

Opinion by: Cynthia L. Martin, Judge

September 28, 2010

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